



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Lee Holloway - Claim for Payment for  
Excess Accrued Leave

File: B-228683

Date: September 15, 1987

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### DIGEST

Former Navy member who had been paid for 30 days' accrued leave during active service and was paid for 30 days' accrued leave at the time of her discharge requests payment for the additional 25 days of accrued leave standing to her credit upon discharge. The former member may not be paid for the additional 25 days' leave because 37 U.S.C. § 501(f) and implementing Department of Defense regulations provide that a member may be paid for no more than 60 days of unused accrued leave during his or her military career.

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### DECISION

Ms. Lee Holloway, a former member of the United States Navy, has appealed our Claims Group's settlement denying her payment for 25 days of unused accrued leave in excess of the 60-day maximum prescribed by 37 U.S.C. § 501(f) (1982 & Supp. III 1985). For the reasons explained below, we sustain our Claims Group's settlement.

### BACKGROUND

Ms. Holloway began active service with the Navy in 1978. In September 1982, while remaining on active duty, she "sold back" 30 days of unused accrued leave and received a lump-sum payment from the Navy. In December 1982, Ms. Holloway was transferred to Guantanamo Bay, Cuba, where, she alleges, she was denied opportunities to use much of the additional leave she was accruing.

On December 31, 1984, Ms. Holloway was discharged from the Navy. At the time, she had 55 days of unused accrued leave to her credit. The Navy paid Ms. Holloway for 30 days' accrued leave, explaining that this payment, combined with the Navy's earlier payment for 30 days' leave, exhausted her entitlement to be paid for no more than 60 days of accrued leave during her military career. Our Claims Group concurred with the Navy's determination, denying Ms. Holloway

payment for the additional 25 days of accrued leave to her credit at the time of her discharge because it exceeded the 60-day maximum prescribed by 37 U.S.C. § 501(f), discussed below.

Ms. Holloway maintains that she is entitled to payment for the 25 days' leave in question because she properly accrued it pursuant to 10 U.S.C. § 701(a) (1982). Also, Ms. Holloway suggests that it would be unfair to deny her payment for the leave because, prior to her discharge, a Navy official had advised her that she would be entitled to payment for all of the leave she had accrued. Finally, Ms. Holloway alleges that she was required to report for duty on 3 days for which she was charged leave in September 1983. She argues that the 3 days' leave charges should be rescinded and that she should now be paid for the additional leave.

#### DISCUSSION

The provisions of 10 U.S.C. § 701, cited by Ms. Holloway, govern a member's entitlement to earn and accumulate leave during active service. Specifically, section 701(a) provides that a member of the Armed Forces is entitled to earn leave at the rate of 2-1/2 calendar days for each month of active service. Section 701(b) provides, with exceptions not applicable here, that a member may not carry over more than 60 days of leave from one fiscal year to the next.

The authority for paying a member for unused accrued leave is contained in 37 U.S.C. § 501. Section 501(b) provides that a member having accrued leave to his or her credit at the time of discharge is entitled to be paid for that leave based on the basic pay the member was receiving on the date of discharge. Section 501(f) limits the amount of leave for which a member may be paid, stating that: "[t]he number of days upon which payment \* \* \* is based may not exceed sixty, less the number of days for which payment has been previously made." Paragraph 40401 of the Department of Defense (DOD) Military Pay and Allowances Entitlements Manual (March 9, 1987), implementing 31 U.S.C. § 501(f), states that "a military member can be paid for no more than 60 days of accrued leave during a military career."

Applying 37 U.S.C. § 501(f) and the implementing DOD regulation, we have held that a member separating from the service may be reimbursed only for those days of accrued leave which, when added to leave days for which he or she previously has been compensated, do not exceed 60 days. See Technical Sergeant Joel C. Mayo (Deceased) and Staff Sergeant Joseph J. Beyers III (Retired), B-199071, July 16, 1980. Because neither the statute nor regulation permits

exceptions to the 60-day limitation, we have held that payment for accrued leave in excess of 60 days is prohibited irrespective of the member's reasons for failing to use the leave. See Mayo and Beyers, above (member's failure to use accrued leave due to disability or death does not provide basis for payment for excess leave); B-181008, May 16, 1974 (payment for excess leave is precluded even though member's failure to use leave resulted from administrative error).

Accordingly, Ms. Holloway was entitled to receive payment for only 30 days' accrued leave upon her discharge since that payment, combined with the previous payment to her for 30 days' leave, exhausted her entitlement to be paid for no more than 60 days' accrued leave during her military career. The additional 25 days of accrued leave standing to Ms. Holloway's credit at the time of her discharge are not compensable, irrespective of the reasons why she was unable to use the leave.

As noted previously, Ms. Holloway alleges that a Navy official advised her before her discharge that she would be entitled to payment for all of the leave she had accrued. However, we have specifically held that misinformation concerning a member's leave situation does not provide a basis for paying the member for leave in excess of the 60-day limitation fixed by statute and regulation. See B-181008, May 16, 1974, cited above. See also B-177186, November 27, 1972.

Finally, Ms. Holloway's contention that she should not have been charged for 3 days' leave in September 1983 is a matter for consideration by Navy finance officials and not our Office. Under Article 3020168 of the Naval Military Personnel Manual (Oct. 1986), the primary responsibility for accounting for a member's leave and determining his or her final leave balance upon separation lies with the Navy Finance Center in Cleveland, Ohio. In any event, we note that even if the 3 days' leave charges were to be rescinded, Ms. Holloway would not be eligible for payment for the leave because it would exceed the 60-day maximum discussed above.

Accordingly, for the reasons stated above, we sustain our Claims Group's settlement and hold that Ms. Holloway may not receive any additional compensation for accrued leave.

*for* *Harry D. Van Cleave*  
Comptroller General  
of the United States